

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 36219 & 36220

STATE OF IDAHO,	)	2010 Unpublished Opinion No. 427S
)	
Plaintiff-Respondent,	)	Filed: April 20, 2010
)	
v.	)	Stephen W. Kenyon, Clerk
)	
JAMES ORVEN SUKRAW,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
)	
	)	SUBSTITUTE OPINION
	)	THE COURT'S PRIOR OPINION
	)	OF APRIL 13, 2010, IS
	)	HEREBY WITHDRAWN
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Patrick H. Owen, District Judge.

Judgments of conviction for battery on a correctional officer and injuring jails, affirmed.

Molly J. Huskey, State Appellate Public Defender; Sarah E. Tompkins, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Rebekah A. Cudé, Deputy Attorney General, Boise, for respondent.

MELANSON, Judge

James Orven Sukraw appeals from his judgments of conviction for battery on a correctional officer and injuring jails. For the reasons set forth below, we affirm.

I.

FACTS AND PROCEDURE

A deputy working at the Ada County jail was performing a routine head count and distributing razors to those inmates who were eligible. Sukraw was being housed in a cell by himself. When the deputy arrived at Sukraw's cell, Sukraw requested a razor. The deputy informed Sukraw to wait while he verified that Sukraw was eligible to receive one. Upon

hearing this, Sukraw became belligerent and began shouting obscenities at the deputy and kicking the metal paneling of his cell. The kicking continued for a long period of time. Later, a second deputy observed that the metal paneling of Sukraw's cell had broken from its welding and bent outward, leaving a hole large enough to reach outside the cell. Sukraw was moved to a secure location. The next day, the second deputy returned to serve Sukraw with a disciplinary report for the damage caused to his jail cell. Sukraw received the report without incident. However, the second deputy was accompanied by the first deputy who also served Sukraw with a disciplinary report for his belligerent and disrespectful behavior from the previous day. Upon receiving this report, Sukraw once again became belligerent and shouted obscenities at the two deputies while exposing himself to them. Sukraw then reached through the delivery slot in his cell and grabbed the second deputy's arm in an attempt to pull it inside the cell. The deputy was able to free himself and was not seriously injured.

In two separate cases, Sukraw was charged with battery on a correctional officer, I.C. §§ 18-915(2) and 18-903, and injuring jails, I.C. § 18-7018. The state filed a motion for joinder of the two cases, arguing that the two acts were connected, they occurred at the same location, involved the same witnesses, and involved overlapping evidence. The district court granted the state's motion pursuant to I.C.R. 13.¹ After a jury trial, Sukraw was found guilty of both charges. Sukraw filed a motion for judgment of acquittal, arguing that I.C. § 18-915(2) did not apply to battery against county jail personnel. The district court denied Sukraw's motion and imposed a unified term of five years, with a minimum period of confinement of one and a half years, for injuring jails and a unified, indeterminate term of five years for battery on a correctional officer. The district court ordered these sentences to run consecutively. Sukraw appeals, challenging the district court's orders granting the state's motion for joinder and denying his motion for judgment of acquittal.

¹ Idaho Criminal Rule 13 provides, in pertinent part: "The court may order two (2) or more complaints, indictments or informations to be tried together if the offenses . . . could have been joined in a single complaint, indictment or information."

II. ANALYSIS

A. Joinder

We first consider Sukraw's argument that the district court erred by granting the state's motion for joinder. Whether joinder of two offenses is proper is a question of law over which we exercise free review. *See State v. Anderson*, 138 Idaho 359, 361, 63 P.3d 485, 487 (Ct. App. 2003). A court may order two or more complaints, indictments, or informations to be tried together if the offenses could have been joined in a single complaint, indictment, or information. I.C.R. 13. Two or more offenses may be joined in a single complaint, indictment, or information if the offenses charged are based on the same act or transaction, or on two or more acts or transactions connected together, or constitute parts of a common scheme or plan. I.C.R. 8(a).

In determining the propriety of joinder of two offenses in *Anderson*, this Court looked to whether a sufficient nexus existed between the two offenses. *Anderson*, 138 Idaho at 361-62, 63 P.3d at 487-88. Some of the relevant facts in this analysis include the proximity of time and place, involvement of the same parties, and the use of overlapping evidence. *Id.* In that case, this Court held that joinder was improper where the two offenses occurred three months apart in different locations and with different witnesses. *Id.* In this case, Sukraw became belligerent and began attacking his cell after the first deputy refused to give him a razor until he verified that Sukraw was eligible to receive one. The second deputy observed the damage to the cell and, the next day, returned with the first deputy to serve disciplinary reports for the damage to cell as well as Sukraw's belligerent behavior. It was upon receiving the latter report that Sukraw again became belligerent and grabbed the second deputy's arm and the battery offense, therefore, was generally related to the earlier injury to the jail. The two offenses occurred about a day apart, involved the same parties and evidence, and only occurred in different cells because Sukraw had to be transferred from his first cell due to the damage he caused. Accordingly, joinder was proper in this case and the district court did not err by granting the state's motion.²

² Even if joinder were not proper in this case, the error would be harmless. Sukraw presented no evidence at trial. The state presented testimony from the deputies involved as well as the employee who performed the repairs on the jail. Therefore, the evidence was overwhelming that Sukraw caused the damage to his cell and that he battered the jail deputy.

B. Judgment of Acquittal

Sukraw argues that the district court erred by denying his motion for judgment of acquittal on the basis that the plain language of I.C. § 18-915(2) does not protect county jail personnel. This Court exercises free review over the application and construction of statutes. *State v. Reyes*, 139 Idaho 502, 505, 80 P.3d 1103, 1106 (Ct. App. 2003). Where the language of a statute is plain and unambiguous, this Court must give effect to the statute as written, without engaging in statutory construction. *State v. Rhode*, 133 Idaho 459, 462, 988 P.2d 685, 688 (1999); *State v. Burnight*, 132 Idaho 654, 659, 978 P.2d 214, 219 (1999); *State v. Escobar*, 134 Idaho 387, 389, 3 P.3d 65, 67 (Ct. App. 2000). The language of the statute is to be given its plain, obvious, and rational meaning. *Burnight*, 132 Idaho at 659, 978 P.2d at 219. If the language is clear and unambiguous, there is no occasion for the court to resort to legislative history or rules of statutory interpretation. *Escobar*, 134 Idaho at 389, 3 P.3d at 67. Constructions of a statute that would lead to an absurd result are disfavored. *State v. Doe*, 140 Idaho 271, 275, 92 P.3d 521, 525 (2004); *State v. Yager*, 139 Idaho 680, 690, 85 P.3d 656, 666 (2004).

Idaho Code Section 18-915(2) provides:

For committing a violation of the provisions of section 18-901 or 18-903, Idaho Code, against the person of a former or present justice, judge or magistrate, jailer or correctional officer or other staff of the department of correction, or a county jail, or of a private correctional facility, or of an employee of a state secure confinement facility for juveniles, an employee of a juvenile detention facility, a teacher at a detention facility, misdemeanor probation officer or a juvenile probation officer:

....

(b) While the victim is engaged in the performance of his duties and the person committing the offense knows or reasonably should know that such victim is a justice, judge or magistrate, jailer or correctional officer or other staff of the department of correction, or of a private correctional facility, an employee of a state secure confinement facility for juveniles, an employee of a juvenile detention facility, a teacher at a detention facility, misdemeanor probation officer or a juvenile probation officer;

the offense shall be a felony punishable by imprisonment in a correctional facility for a period of not more than five (5) years, and said sentence shall be served consecutively to any sentence being currently served.

Sukraw argues that county jailers are not protected under this statute because, while specifically enumerated in the opening sentences of I.C. § 18-915(2), they are omitted in subsection (b).

We do not accept Sukraw's interpretation of this statute. Idaho Code Section 18-915(2) clearly and unambiguously imposes felony liability for any battery on county jailers while they are engaged in the performance of their duties. They are a specifically enumerated class of protected persons in the opening sentences of that section. The omission of county jailers from subsection (b) does not affect that status. The plain language of the statute, as written, provides that when an assailant commits a battery upon a county jailer, among others, and that person knows, or should know, that the victim is a jailer, he or she is guilty under that section. Both state and county jail employees are included in I.C. § 18-915(2) and any repetition in subsection (b) is unnecessary. At that point in the statute, it makes no difference whether the jailer is a state or county employee as long as the assailant knew, or should have known, of the jailer's status at the time of the offense. Therefore, the statute plainly and unambiguously applies to batteries committed upon jailers in the exercise of their duties. Accordingly, the district court did not err by denying Sukraw's motion for judgment of acquittal.

III.

CONCLUSION

There was a sufficient nexus between Sukraw's two offenses justifying the joinder of the two cases for trial. Therefore, the district court did not err by granting the state's motion for joinder. Idaho Code Section 18-915(2) clearly and unambiguously includes county jailers within its protections. Therefore, the district court did not err by denying Sukraw's motion for judgment of acquittal. Accordingly, Sukraw's judgments of conviction for battery on a correctional officer and injuring jails are affirmed.

Chief Judge LANSING and Judge GUTIERREZ, **CONCUR.**